THOMAS ALVIN CROSS

v.

THOMSON THOMAS & ORS

HIGH COURT MALAYA, SEREMBAN
AZHAR MA'AH J
[CIVIL APPEAL NO: 12-47-2001]
23 MARCH 2005

CIVIL PROCEDURE: *Parties - Intervention - Appeal against decision of sessions court judge allowing insurance company leave to intervene - Principles applicable - Whether insurance company had valid grounds to intervene - Whether sessions court judge correctly exercised discretion*

This was the plaintiff's appeal against the decision of the sessions court judge allowing the application of one Kurnia Insurans (Malaysia) Bhd ('the insurance company') seeking leave to intervene and to be made a co-defendant in proceedings filed by the plaintiff against the two defendants in the court below. The plaintiff's claim against the two defendants arose out of a motor accident alleged to have taken place between the plaintiff's motor van and a motor van driven by the 1st defendant that was owned by the 2nd defendant. The plaintiff contended that any issue that the insurance company wished to plead in the proceedings aside from those related to the alleged accident could only be pleaded after the defendants' liability had been determined by the court. The insurance company, however, argued that it had valid grounds to intervene at this stage, as there was a suspicion of fraud involving the two defendants in respect of the plaintiff's claim against them. This had prompted the insurance company to seek leave of the court to intervene or else s. 96(1) of the Road Transport Act 1987 would be triggered against it notwithstanding the alleged fraud by the parties concerned.

Held (dismissing the appeal):

[1] When two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party or on such terms as it thinks fit. In this instance, the presence of the insurance company before the court would be necessary to ensure that all matters in dispute in the cause or matter could be effectually determined and adjudicated upon between all those directly concerned in the outcome. Reverting to the present appeal, the sessions court judge had rightly exercised her discretion in granting the insurance company leave to intervene. (pp 63 e & 64 a-c)

Case(s) referred to:
Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC ***(foll)***
Badruzamani Azmi v. Kurnia Insurans (M) Bhd [2001] 4 CLJ 280 HC ***(refd)***
Chu Yuen Wah v. Lee Koh Kwok & Anor [1995] 3 KKC 629 ***(foll)***
Gurtner v. Circuit [1968] 1 All ER 328 ***(foll)***
QBE Insurance Ltd v. Hashim Abdul & Anor [1981] 2 MLJ 275 ***(refd)***
Pegang Mining Co Ltd v. Choong Sam & Ors [1969] 2 MLJ 52 ***(foll)***

Legislation referred to:
Road Transport Act 1987, s. 96(1)
Rules of the High Court 1980, O. 15 r. 6, O. 16 r. 11

For the appellant/plaintiff - Manian Raju; M/s Gunaretnam & Co
For the 1st & 2nd respondents/defendants - En Subatra; M/s VP Nathan & Partners
For the 3rd respondent/intervener - N Sivananthan; M/s Sivananthan

Reported by Suresh Nathan

JUDGMENT

Azhar Ma'ah J:
This is the plaintiff's appeal against the decision of the Sessions Court Judge in allowing the application of Kurnia Insurans (Malaysia) Berhad that the latter be allowed to intervene and be made a co-defendant in a proceedings filed by the plaintiff against the two defendants at the court below.

The plaintiff's claim against the two defendants at the court below arose out of a motor accident alleged to have taken place between the plaintiff's motor van and a motor van driven by the 1st defendant and owned by the 2nd defendant. The defendants through their solicitors appointed by their insurance company ie, Kurnia Insurans (Malaysia) Berhad filed their defence. Subsequently, the insurance company discharged the said solicitors resulting in the defendants being left in the lurch. Subsequently to that, the insurance company through their second solicitors filed an application for leave to intervene and be made a party in the said proceedings. The Sessions Court Judge after hearing the said application allowed both prayers. Hence this appeal by the plaintiff.

Mr. Manian Raju in ventilating the plaintiff's disagreement with the decision of the Sessions Court Judge drew to this court's attention to decisions of the High Courts in *Badruzamani Azmi v. Kurnia Insurans (M) Bhd.* [2001] 4 CLJ 280 and *QBE Insurance Ltd. v. Hashim bin Abdul & Anor.* [1981] 2 MLJ 275. Following the decisions in these cases, it was argued for the plaintiff that by way of subrogation the insurance company steps into the shoes of the

defendants and conduct the defence on their behalf. It follows that whatever issues that the insurance company wished to plead in the proceedings aside from those related to the alleged accident can only be pleaded after the defendants' liability has been determined by the court.

In opposition, counsel for the insurance company argued that they had valid grounds to intervene at this stage in that based on a report made by PLUS it had come to the insurance company's knowledge that there was only one vehicle ie, that of the plaintiff that was involved in the said accident. This gave rise to a suspicion of fraud involving the two defendants in respect of the plaintiff's claim against them. This had prompted the insurance company to seek leave of the court to intervene or else s. 96(1) of the Road Transport Act 1987 would be triggered against them notwithstanding the alleged fraud by the parties concerned.

Referring this court to a Hong Kong's Court of Appeal decision in *Chu Yuen Wah v. Lee Koh Kwok & Anor.* [1995] 3 HKC 629 counsel for the insurance company drew this court's attention to the *ratio decidendi* of that case ie, jurisdiction under O. 15 was wide enough to permit the joinder of a party whose liability to pay was contingent not only upon the outcome of the proceedings which it sought to join but also upon any other event or proceedings. The whole basis of the rule was to enable a person not a party to protect his rights when necessary so that natural justice could be done to him. There was nothing or contrary to the principle in permitting a party to raise alternative defences in the same case. To this principle I can't agree more. The presence of the insurance company before the court would be necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon in accordance with the rule. This view is further fortified by a Privy Council's decision in *Pegang Mining Co. Ltd. v. Choong Sam & Ors.* [1969] 2 MLJ 52. It reads *inter alia* "(2) One of the principal objects of O. 16 r. 11 is to enable the court to prevent injustice being done to a person whose right will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object calls for a flexibility of approach."

Back home, the Supreme Court in *Arab Malaysian Merchant Bank Bhd. v. Dr. Jamaludin Dato' Mohd. Jarjis* [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19, decided that a person who is not a party is allowed to intervene if the intervener is directly affected not only in his legal rights (as provided for under O. 15 r. 6 RHC 1980) but in his pocket.

In *Gurtner v. Circuit* [1968] 1 All ER 328 Lord Denning MR had this to say:

> ... when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party or on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to "be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome.

Reverting to the present appeal, based on the abovementioned principles I am of the view that the Session Judge had rightly exercised her discretion in granting the insurance company leave to intervene. In the circumstances, the plaintiff's appeal is dismissed with costs.